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 Equal Employment Opportunity Commission

UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 SAN JOSE DIVISION

EQUAL EMPLOYMENT OPPORTUNITY )  
 COMMISSION, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 FRESH EXPRESS, INC., )  
 )  
 Defendant. )  
 )  
 )  
 )

**CIVIL ACTION NO.**

**COMPLAINT**

Civil Rights  
 Employment Discrimination

**JURY TRIAL DEMAND**

**NATURE OF THE ACTION**

This is an action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991 to correct unlawful employment practices on the basis of sex, retaliation and constructive discharge and to provide appropriate relief to Ms. Armida Urquizo aggrieved by Defendant's unlawful practices described herein. As alleged below, Defendant Fresh Express, Inc., (hereinafter "Defendant") unlawfully subjected Ms. Urquizo to sexual harassment, creating

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1 an offensive, hostile, abusive work environment. Plaintiff further alleges that Defendant  
2 subjected Ms. Urquizo to retaliation after she complained about and/or rejected the unlawful  
3 harassment.

#### 4 **JURISDICTION AND VENUE**

5 1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337,  
6 1343 and 1345. This action is authorized and instituted pursuant to Section 706 (f) (1) and (3) of  
7 Title VII of the Civil Rights Act of 1964, as amended (Title VII), 42 U.S.C. §2000e-5 (f) (1) and  
8 (3), and Section 102 of the Civil Rights Act of 1991, 42 U.S.C. §1981(a).

#### 9 **INTRA-DISTRICT ASSIGNMENT**

10 2. This action is appropriate for assignment to the San Jose division because the  
11 unlawful employment practices alleged were committed within Santa Clara County, within the  
12 jurisdiction of the United States District Court for the Northern District of California.

#### 13 **PARTIES**

14 3. Plaintiff, the Equal Employment Opportunity Commission (the "Commission"), is  
15 the agency of the United States of America charged with the administration, interpretation and  
16 enforcement of Title VII, and is expressly authorized to bring this action by Sections 706 (f) (1)  
17 and (3) of Title VII, 42 U.S.C. §2000e-5 (f) (1) and (3).

18 4. At all relevant times, Fresh Express, Inc. (hereinafter "Defendant") has  
19 continuously been, and is now, a California corporation, qualified and doing business in the state  
20 of California and the city of Salinas and has continuously had and does now have at least 15  
21 employees.

22 5. At all relevant times, Defendant has continuously been, and is now, an employer  
23 engaged in an industry affecting commerce within the meaning of Sections 701(b), (g) and (h) of  
24 Title VII, 42 U.S.C. §§ 2000e(b), (g) and (h).

#### 25 **STATEMENT OF CLAIMS**

26 6. More than thirty days prior to the institution of this lawsuit, Ms. Armida Urquizo  
27 filed a charge with the Commission alleging violations of Title VII by Defendant. All conditions  
28 precedent to the institution of this lawsuit have been fulfilled.

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1           7.       Since at least January 1994, Defendant has engaged in unlawful employment  
2 practices in violation of Section 703 (a) (1) of Title VII, 42 U.S.C. § 2000e-2 (a) (1). These  
3 practices include subjecting Ms. Urquizo to a sexually hostile, abusive, intimidating and  
4 offensive work environment, which culminated in a tangible employment action.

5           8.       Since at least January 1998, Defendant subjected Ms. Urquizo to adverse  
6 employment actions in retaliation for her opposition to and rejection of the sexual harassment in  
7 violation of Section 704 (a) of Title VII, 42 U.S.C. Section 2000e-3 (a). These practices include  
8 but are not limited to reduction of hours, change in work schedule and continued harassment.

9           9.       The effect of the practices complained of above has been to deprive Ms. Urquizo  
10 of equal employment opportunities and otherwise adversely affect her employment status  
11 because of sexual harassment and on account of retaliation.

12           10.      The unlawful employment practices complained of above were and are  
13 intentional.

14           11.      The unlawful employment practices complained of above were done with malice  
15 and/or reckless indifference to the federally protected rights of Ms. Urquizo.

16                           **PRAYER FOR RELIEF**

17           Wherefore, the Commission respectfully requests that this Court:

18           A.       Grant a permanent injunction enjoining Defendant, its officers, successors,  
19 assigns, and all persons in active concert or participation with it, from engaging in sexual  
20 harassment, retaliation and any other employment practice which discriminates on the basis of  
21 sex.

22           B.       Order Defendant to institute and carry out policies, practices, and programs which  
23 provide equal employment opportunities for women and those persons who complain about  
24 sexual harassment, and which eradicate the effects of its past and present unlawful employment  
25 practices.

26           C.       Order Defendant to make whole Ms. Urquizo by providing appropriate back pay  
27 and benefits with prejudgment interest and other affirmative relief necessary to eradicate the  
28 effects of their unlawful employment practices, including other appropriate relief to be

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1 determined at trial.

2 D. Order Defendant to make whole Ms. Urquizo by providing compensation for past  
3 and future pecuniary losses resulting from the unlawful employment practices complained of  
4 above, including but not limited to medical expenses or other out of pocket expenses in amounts  
5 to be determined at trial.

6 E. Order Defendant to make whole Ms. Urquizo by providing compensation for past  
7 and future non-pecuniary losses resulting from the unlawful practices complained of above,  
8 including but not limited to pain and suffering, emotional distress, indignity, loss of enjoyment of  
9 life, loss of self-esteem and humiliation, in amounts to be determined at trial.

10 F. Order Defendant to pay Ms. Urquizo punitive damages for its malicious and  
11 reckless conduct complained of above, in amounts to be determined at trial.

12 G. Grant such further relief as the Court deems necessary and proper in the public  
13 interest.

14 H. Award the Commission its costs of this action.

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**COMPLAINT**

**JURY TRIAL DEMAND**

The Commission requests a jury trial on all questions of fact raised by its complaint.

Respectfully submitted,

NICHOLAS INZEO  
Acting General Counsel

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION  
Office of the General Counsel  
Washington, DC 20507

Dated: \_\_\_\_\_

s/ William R. Tamayo  
WILLIAM R. TAMAYO  
Regional Attorney

Dated: \_\_\_\_\_

s/ Jonathan T. Peck  
JONATHAN T. PECK  
Supervisory Trial Attorney

Dated: \_\_\_\_\_

s/ Lucila G. Rosas  
LUCILA G. ROSAS  
Trial Attorney

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